

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3328 of 1994

AND

SPECIAL CIVIL APPLICATION NO. 3329 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMBALAL S.NAI

Versus

STATE OF GUJARAT

Appearance:

MR R.R. VAKIL FOR MR. YN OZA for Petitioner
MR. MUKESH PATEL, AGP, for respondents Nos. 1 and 2
MR. B.N. PATEL for respondents Nos. 3 and 4
Respondent No. 5 served

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 21/04/97

ORAL JUDGEMENT

Heard the learned counsel for the parties. The brief facts of the case are that the petitioner was appointed as a primary teacher in the year 1974 in N.M. Desai Primary School, Kadi, a private Institution. At

the time of appointment the petitioner was duly qualified. As a result of reduction in the strength of classes and consequential reduction and requirement of teachers, petitioner's services were required to be terminated. Before service of termination order came to be effected, apprehending the impending termination of services the petitioner approached the Tribunal and obtained interim relief. The matter came up before this court and the Special Civil Application filed by the petitioner was rejected. Thereafter, in pursuance of the show cause noticed issued and as a result of reduction and strength of staff, petitioner's services came to be terminated by order dated 19.8.1993. At the time of termination the required compensation was paid to the petitioner by his employer as per the conditions of service.

2. The petitioner thereafter made an application before the respondents seeking benefit of fresh appointment at another institutions wherever existed vacancy against which he could be freshly appointed in terms of Government Resolution dated 19.8.1989. Application of the petitioner came to be granted by order dated 29.1.1994 along with that of Gordhanbhai Visabhai Patel who had also simultaneously applied along with petitioner on 3.9.1993 when the District Primary Education Officer directed to offer appointment as primary teachers afresh to the petitioner and Gordhanbhai as they fell within the criteria of the Resolution dated 19.8.1989. It was clearly stated in the order that the applicants shall not be entitled to any benefit of previous services in the matter of fixing of pay, seniority or continuity of services, that the appointment shall be treated as fresh appointment, that the seniority shall be counted from the date of their joining of duty as a primary teacher and they shall be paid salary in the pay scale applicable to primary teacher as is payable at initial appointment and that at the time of retirement they shall not be entitled to benefit of previous services. It was also stated that in case any vacancy of teacher arises for Class I to VII in the parent institution from which their services were terminated they may be required to join that institution on absorption from the present post, which the incumbents will not be entitled to refuse. In pursuance of this order the petitioner was appointed as primary teacher on 29.1.1994 at Indrath in Taluka Kadi where he reported on duty on 2.2.1994. However, after one month by order dated 3.3.1994 the petitioner was served with the order terminating his services by the Principal of Irana Pradhmik Shala along with order of the District Primary

Education Officer dated 2.3.1994, in pursuance of which termination order has been made.

3. These two orders referred to above made by the District Primary Education Officer and the Principal giving effect thereto vide order dated 3.3.1994 are subject matter of this petition. In the first instance, it has been urged on behalf of the petitioner that the impugned order terminating the services of the petitioner has been made without offering any opportunity of hearing. Therefore, the orders affecting petitioners' civil rights adversely in breach of principles of natural justice are void ab initio. It has also been urged that the reasons disclosed for termination in the impugned order are not germane nor relevant.

The fact that the impugned orders have been made without notice to the petitioner is not in dispute. Ordinarily this alone is sufficient to imperil validity of the orders under challenge. It is not a case of discharge simpliciter of a temporary hand either on completion of the period of which he has been appointed nor is the order discharging the employee of his service having been found unsatisfactory during the period of probation. The petitioner was given appointment in furtherance of a policy of the State envisaged in Resolution dated 19.8.1989 to the benefits of which the petitioners were admitted vide order dated 29.1.1994. The order dated 29.1.1994 spoke that the petitioner fulfills the eligibility criteria for extending the benefit of this Resolution dated 19.8.1989 to him. The impugned order in terms amounts to withdrawal of the benefits granted under order dated 29.1.1994 holding it otherwise. Obviously this could not have been done without offering the petitioner an opportunity of being heard and show cause against the alleged plea of the officer making order that the petitioner has either not entitled to get benefit of the order as held by the earlier order or has otherwise forfeited right to continued benefit of the said order. It cannot be said in the facts and circumstances as it was sought to be made out, that it was an order simpliciter of correcting inadvertent mistake inasmuch as it cannot be said by reading two orders and the averments made in the petition and reply that order dated 29.1.1994 suffered from any such obvious error which could be corrected without notice.

4. In this connection it has further been urged that since the petitioner had not disclosed the fact of receiving compensation at the time of termination of his

service from previous employment with effect from 19.8.1993, the petitioner was guilty of suppressio vari in obtaining the order dated 29.1.1994 in his favour. Since the fact about non-disclosure of this fact has not been disputed, jurisdiction under Article 226 ought not to be invoked in reviving an order which has been obtained by suppressing facts.

5. The contention though appears to be facile does not stand scrutiny. From the perusal of the Resolution dated 19.8.1989 and terms of order dated 29.1.1994 it is apparent that the scheme is not to declare a person surplus from the existing post same having been abolished or not required to be filled, and absorption in equal or equivalent posts elsewhere. In such cases continuity of link between one post and the present services is the inherent character and there cannot be a case of absorption of service not in that sense where employer employee relation was brought to an end by valid order of termination. However, in the case of fresh appointment when no link with the past in the matter of continuity, seniority or pay benefits is retained but which has been envisaged only for the purpose of offering fresh opportunity of appointment to the persons who have been rendered jobless as a result of reduction in posts or abolition of posts by providing age relaxation and proposed preference policy in case of their availability, but subject to the requirement of qualification in presenti as fresh hand. The fulfillment of terms or conditions of service at the time of termination of past service is hardly relevant. The fact that earlier services have been terminated validly is rather the condition precedent before a person comes in need of invoking policy envisaged under the Government Resolution dated 19.8.1989 for fresh appointment after termination. Therefore, whether earlier services were terminated with payment of compensation or without payment of compensation is hardly relevant for the purpose of offering new appointment when said appointment is sought under the said Government Resolution. It is not the condition of eligibility under the said Resolution that a teacher whose services have been terminated on payment of compensation will not be eligible to seek fresh appointment under it. Nor it is permissible for the respondents to read condition No. 5 of the order dated 29.1.1994 to treat the appointment given by the order dated 29.1.1994 as appointment by absorption of a surplus employee. In fact, the petitioner had never been declared surplus. As a result of reduction in posts he was rendered surplus and instead of declaring him surplus by absorption his services were terminated. These facts

are not and cannot be disputed. Therefore, the petitioner cannot be refused relief on the ground of suppressing material facts. Moreover, it is not that every non-disclosure of facts becomes a case of suppressio vari. It is only non-disclosure of facts which are material and relevant for decision making results in invoking the principles applicable to the conduct of suppressio vari.

6. Another plea which was urged by respondent is that since only fresh appointment could be offered to the petitioner and he did not hold the requisite qualification for the post, he could not have been appointed even under the Circular. The petitioner has stated that he holds requisite qualification for teaching Hindi, the duty which he is discharging under the appointment dated 29.1.1994, as per the qualification prescribed vide para 176 of the Primary Teachers Qualification requirements, vide Annexure-E to the petition. In any event that being a question of evidence, it could not have been held against the petitioner without notice to him. So far as the relaxation of age is concerned, the learned counsel for the respondents was candid enough to state that the petitioner's services have been terminated with the previous employer with effect from 19.8.1993, the eligibility to age relaxation under Resolution dated 19.8.1989 cannot be denied to the petitioner.

7. As a result of the aforesaid discussion, this petition succeeds and is allowed. The impugned order dated 2.3.1994 by the District Primary Education Officer and the consequential order dated 3.3.1994 terminating the services are quashed. Rule is made absolute. No order as to costs.

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8. This petition also arises on identical facts and circumstances inasmuch as after the petitioner Gordhanbhai Patel's services having been terminated on payment of compensation with the previous employer as Primary School Teacher, fresh appointment was given to him by order dated 29.1.1994 simultaneously with one order on the same condition as in the case of the petitioner in Special Civil Application No. 3328 of 1994 and by single order dated 2.3.1994 on the same grounds the appointment given to the petitioner in pursuance of order dated 29.1.1994 has been sought to be cancelled by the institution where he was serving. The contention raised in the two petitions are also same. Therefore,

what has been stated above in connection with Special Civil Application No. 3328 of 1994 equally applies to the facts of the case.

Accordingly this petition too succeeds and allowed. The impugned orders dated 2.3.1994 and the consequential order dated 3.3.1994 are quashed. Rule is made absolute with no order as to costs.

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